

APPENDIX II

Vinyl Chloride Civil Penalty Policy

The attached chart shall be used to determine the gravity component of the civil penalty settlement amount for cases enforcing the National Emission Standard for Vinyl Chloride. It is to be used in Lieu of the scheme for determining the gravity component set forth in the general Clean Air Act Stationary Source Civil Penalty Policy.

The settlement penalty for vinyl chloride cases, as for other Clean Air Act cases, consists of a gravity component and an economic benefit component. Adjustments for degree of willfulness or negligence, degree of cooperation/noncooperation, history of noncompliance, ability to pay, "other unique factors," and litigation practicalities should be made, if appropriate, in accordance with the Stationary Source Civil Penalty Policy.

The gravity component of the penalty reflects the seriousness of the violation. A separate scheme was developed for vinyl chloride cases because several of the factors in the general policy, such as length or time of violation, whether the area is primary non-attainment, and level of violation as a percentage above the standard largely do not apply to vinyl chloride cases. Also, the hazardous nature of the pollutant and the difficulty in determining economic benefit are reflected by establishing a substantial gravity component.

The vinyl chloride gravity component is therefore tied to the amount of vinyl chloride released in a given incident, which is used as a measure of the seriousness of each violation. Also, for relief valve discharges, manual vent valve discharges, and 10 ppm violations, an adjustment factor is to be used to account for excessive frequency of discharges in a given time, which is a reflection of poor performance regardless of the amount of vinyl chloride discharged to the atmosphere. The frequency adjustment factor differs from the adjustment factor for history of noncompliance, which reflects violations occurring prior to those which are the subject of the current enforcement action.

The chart is to be applied as follows: For each violation, assign a dollar amount based on the type and magnitude of violation as described in the chart. Relief valve discharges, manual vent valve discharges and violations of 10 ppm standards

should then be grouped by calendar years. If the number of these violations is three or more in any calendar year, the total penalty for that period should be multiplied by the appropriate "frequency adjustment factor." The total gravity component for the case is the sum of the penalty numbers for each violation, adjusted where appropriate to account for excessive frequency. The settlement penalty for the case as a whole cannot exceed the statutory maximum of \$25,000 per day per violation. Sample calculations are attached to this policy.

The economic benefit component may be impractical to determine in vinyl chloride cases, depending on the nature of the violations. The benefit component should be determined if feasible, e.g., where a pattern of violations indicates a need for specific technology, equipment, or procedures, or where the defendant has chosen a "fix" to address a series of violations.

This revised policy shall apply to all pending and future vinyl chloride cases.

Relief Valve Discharges, Manual Vent Valve Discharges, Violations
of 10 ppm Standards

Emissions

Pounds of VC released
Penalty

0 - 100
>100 - 2000
>2000 - 5000
>5000 - 7500
>7500 - 10,000
over 10,000
\$1000
2000
5000
10,000
15,000
25,000

Frequency Adjustment Factors
of Violations in Calendar Year
Multiplier

3
4+
1.5
2

Failure to Report

Size of Release Not Reported (lbs.)
Penalty

0 -100
100- 500

500 - 1000
1000 - 2000
over 2000
\$2000
6000
10,000
20,000
25,000

Graduated scale for late reporting (if not in response to direct request from State or EPA) - 10-day discharge reports (as percentage of penalty for failure to report)

Within 2 months (from discharge)	25% of penalty
2-4 months	50% " "
4-6 months	75% " "
over 6 months	100% " "

Stripping Violations and Reactor Opening Loss Violations Stripping

Magnitude of Violation

Suspension/Latex
Dispersion
Penalty

400-500ppm

500-600

600-700

700-800

800-900

900-1200

1200-1400

1400-1600

over 1600

2000-2500 ppm

2500-3000

3000-3500

3500-4000

4000-4500

4500-6000

6000-7000

7000-8000

over 8000

\$1000

2000

3000

4000

5000

10000

15000

20000

25000

Reactor Opening Loss

Penalty = \$1000/violation (for each reactor)

Failure to Measure

Penalty = Maximum penalty amount for each type of violation
= \$25000 (stripping)
= \$1000 (reactor opening loss)

Failure to Submit Complete Semiannual Report

Penalty = \$25,000

Graduated scale for late semiannual report (if not in response to direct request from state to EPA)

Within 2 months	\$6,250
2-4 months	12,500
4-6 months	18,750
Over 6 months	25,000

Example 1

ABC Chemical Corporation owns a polyvinyl chloride plant in Louisiana. The United States has filed an enforcement action alleging relief valve discharge violations, failure to report relief valve discharges, reactor opening violations, and stripping violations. The settlement penalty is determined as follows:

Gravity Component

Relief Valve Discharges		Penalty/Discharge
July 6, 1981	446 lbs.	\$2,000
August 15, 1981	1250 lbs	\$2,000 x 1.5 = \$7,500
November 30, 1981	46 lbs	\$1,000
March 17, 1982	127 lbs	\$2,000 x 1 = \$12,000
July 15, 1982	6271 lbs	\$10,000
Subtotal for Relief Valve Discharges		\$19,500
Failure to Report		
Failed to report July 6, 1981 discharge		\$5,000
Report August 15, 1981 discharge 1 Month late - 25% x \$20,000		5,000
Subtotal for reporting		\$10,000
Reactor Opening Loss Violations		
77 reactor opening loss violations		\$77,000
Stripping Violations (Suspension)		
January 17, 1982	556 ppm	\$2,000
July 10, 1982	421 ppm	\$1,000
August 19, 1982	494 ppm	\$1,000
Subtotal for stripping		\$4,000
Total Gravity Component		\$110,500

Benefit Component

None determined

Preliminary deterrence amount	\$110,500
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Adjustments

Negligence

Add 30% of gravity component - emission
violations generally due to
repetition of same cause

+ 30% (110,500)	+ \$ 33,150
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Minimum penalty settlement amount	\$143,650
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Example 2

Polynesian Polymers, Inc., owns a polyvinyl chloride plant in Texas. The United States has filed an enforcement action alleging relief valve and manual vent valve discharge violations, reporting violations, and reactor opening loss violations. The settlement penalty is determined as follows:

Gravity Component

Relief Valve and Manual Vent Valve Discharges

Penalty/Discharge

July 6, 1983	271 lbs	\$2,000	
July 15, 1983	621 lbs	2,000	
August 21, 1983	710 lbs.	2,000	
November 1, 1983	6,221 lbs.	10,000	x 2 + 32,000
January 17, 1984	7,721 lbs	15,000	
			X 1 + 17,000
November 30, 1984	526 lbs	2,000	
January 14, 1985	2,771 lbs	5,000	
July 19, 1985	4 lbs	1,000	x 1.5 + 12,000
December 21, 1985	172 lbs	2,000	
Subtotal for Relief Valve Discharges		\$61,000	

Failure to Report

Failed to report Nov. 1, 1984 discharge \$25,000

Failed to report Nov. 30, 1984 discharge 10,000

Subtotal for reporting \$35,000

Reactor Opening Loss Violations

214 reactor opening loss violations	\$214,000
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Total Gravity Component	\$310,000
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Benefit Component

Economic benefit of delay in installing "clean reactor" technology-deemed necessary to comply with reactor opening loss standard (BEN calculations)	\$100,000
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Preliminary deterrence amount	\$410,000
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Adjustments

History of Noncompliance

Add 30% of subtotal for reporting violations; cited for similar violations at his plant in action under the Clean Water Act	+ 10,500
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No other adjustments

Minimum penalty settlement amount	\$420,500
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